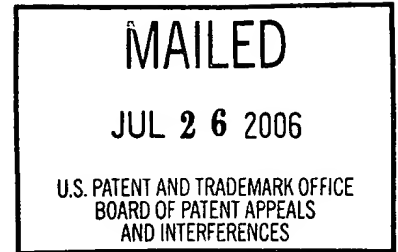


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte BETH A. LANGE,
DAVID J. TYRRELL,
DUANE G. KRZYSIK,
JOHN E. LAABS, and
BRUCE S. WILLIAMSON



Appeal No. 2006-2059
Application No. 09/998,500

ON BRIEF

Before KIMLIN, JEFFREY T. SMITH, and GAUDETTE, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-71. Claim 1 is illustrative:

1. A breast pad for absorbing fluid leaking from the breast of a woman and minimizing the soiling of clothing worn by the woman, said breast pad having a front side which faces the breast and a back side which faces the clothing, said front side comprising from about 0.1 g/m² to about 30 g/m² of a composition for improving breast and nipple skin health, said composition comprising omega-3 fatty acids, and wherein said composition is suitable for ingestion by a suckling infant.

The examiner relies upon the following references as evidence of obviousness:

Buckley et al. (Buckley)	5,281,186	Jan. 25, 1994
Allen	6,361,806	Mar. 26, 2002

Appellants' claimed invention is directed to a breast pad for breast-feeding women that comprises a front side which faces the breast. The front side comprises a composition comprising omega-3 fatty acids, which improve the health of the breast and nipple skin. The composition is suitable for ingestion by a suckling infant. According to appellants, "[t]he composition for use on the breast pad comprises a lipid comprising omega-3 fatty acids to be introduced onto the surface of a breast pad [sic, pad] which faces the mother during use such that the omega-3 fatty acids can be transferred from the breast pad to the mother's breast skin and nipple during use to replenish skin lipids lost from the breast and nipple skin during breast feeding " (page 3 of principal brief, third paragraph).

Appealed claims 1-71 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Buckley in view of Allen. The examiner has also objected to the specification as failing to provide antecedent basis for the recitation that the composition is suitable for ingestion by a suckling infant, but we note that "[t]hat the examiner contends that a 35 U.S.C. § 112, first paragraph, rejection has never been made in the instant application " (page 8 of answer, last sentence). Accordingly, inasmuch as an examiner's objection to the specification is outside our scope of review, we will limit our consideration to the examiner's § 103 rejection of the appealed claims.

Appellants have not separately argued any particular claim on appeal with any reasonable degree of specificity. At most, appellants' principal brief, at pages 18 and 19, reiterates the limitations of various claims on appeal but fails to provide a substantive separate argument for

any claim other than claim 1. Accordingly, all of the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

Buckley, like appellants, discloses a breast pad for absorbing fluid that leaks from the breast of a woman, and Buckley expressly teaches that "[l]otion of any type as is commercially available to afford protection and healing to an individual's skin portion, and more particularly to the nipple portion, is provided" (column 3, lines 32-35). Buckley does not specifically teach that the lotion may contain the presently claimed omega-3 fatty acids. However, as pointed out by the examiner, Allen discloses topical compositions comprising omega-3 fatty acids that may be applied to the breasts of a woman for therapeutic or cosmetic reasons. Accordingly, we concur with the examiner that it would have been obvious for one of ordinary skill in the art to select the omega-3 fatty acids of Allen as the commercially available healing component of Buckley's breast cup. Since it was known in the art to apply omega-3 fatty acids to a women's breast to achieve various therapeutic and cosmetic effects, we are convinced that one of ordinary skill in the art would have considered omega-3 fatty acids as one of the commercially available components of the lotion disclosed by Buckley. Moreover, insofar as appellants' specification acknowledges that it was known in the art that "[c]racked and painful nipples may be caused, in part, by the loss of naturally occurring lipids on the skin surface which may be lost during breast

feeding” (page 1, lines 17-19), we are confident that one of ordinary skill in the art would have found it obvious to replenish the lost lipids by including them in the lotion of Buckley.

Appellants contend that since Example 1 of Allen is a composition comprising sodium borate, which should not be ingested by an infant, Allen teaches away from using a composition that is suitable for ingestion by a suckling infant. However, we are satisfied that one of ordinary skill in the art would have readily recognized that compositions to be used in the breast cup of Buckley should not contain components that are not suitable for ingestion by a suckling infant. We find that one of ordinary skill in the art would have understood that Allen is directed to a wide variety of applications that do not include ingestion by a suckling infant. Likewise, contrary to the implication of appellants’ argument, one of ordinary skill in the art would have found it obvious to eliminate the estrogen of Allen if it is known to be dangerous to the health of a mother and the suckling infant.

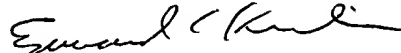
As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

In conclusion, based on the foregoing, the examiner’s decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a)(iv)(effective Sept. 13, 2004).

AFFIRMED



Edward C. Kimlin
Administrative Patent Judge



Jeffrey T. Smith
Administrative Patent Judge



Linda M. Gaudette
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

ECK/cam

Appeal No. 2006-2059
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